IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

O.S.A. No.6 of 2005

Judgment reserved on: 12.08.2008

Date of decision: 27.8.2008

Ram Dass ....Appellant

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? Yes

For the Appellant: Mr.G.D. Verma, Senior Advocate with Mr.B.C.Verma, Advocate

For the Respondents: M/s.R.M. Bisht & Rajesh Mandhotra, Dy.A.Gs for respondents 1 to 3.

Mr.B.M. Chauhan, Advocate for respondent Mo.4.

Deepak Gupta, J.

This Appeal is directed against the judgment and decree dated 24.5.2005 passed by a learned Single Judge of this Court dismissing the suit of the Appellant (hereinafter referred to as the plaintiff) whereby the plaintiff had laid a claim for recovery of damages amounting to Rs.15,56,438/- along with interest @ 18% p.a.

The undisputed facts are that the plaintiff is a forest contractor. He was given permission to fell 169 trees vide order dated July 13, 1980. He cut the trees and converted the standing trees into timber.

He thereafter brought the converted timber to the road-head and stacked the same at Khagna Pul in Tehsil Chopal, District Shimla.

It is also not disputed that a criminal case under Sections 379, 420 IPC and Sections 41&42 of the Indian Forest Act read with Section 5(2) of the Prevention of Corruption Act was registered against the plaintiff and other persons in pursuance of FIR No.12 of 1994. The timber stacked at Khagna Pul was taken into possession by the Enforcement Department.

Here the dispute starts. According to the plaintiff he had stacked 2510 scants of different sizes and species of timber at Khagna Pul. He also alleges that the timber was seized by the Forest Department in the year 1982 itself. According to the seizure memo prepared by the police the number of scants seized was much less and only 1556 scants were seized in the year 1984 and they were auctioned on the direction of the learned Special Judge, Shimla on March 25, 1986. The plaintiff claims that he is entitled to the value of the shortfall i.e. 954 scants of different sizes of timber. He claimed a sum of Rs.5,06,100/- on this account. The plaintiff also claims that though the timber was auctioned for Rs.4,44,576/- he was only given Rs.3,94,238/- and claims the difference of Rs.50,338/-. In all he claims a sum of Rs.5,56,438/-.

The second aspect of the case is that though the plaintiff was convicted by the learned Special Judge vide judgment dated December 22, 1999, in appeal the said judgment was set-aside by this Court on November 25, 1993. The plaintiff claims that he was

prosecuted unnecessarily and without any probable cause and has claimed Rs.10 lakhs as damages for wrongful/malicious prosecution.

The defendants contested the suit on various grounds. The main defence was that the suit was registered by the Enforcement Department on a complaint made by Daulat Ram, President of Gram Panchayat, Khagna. After preliminary inquiry a regular case was registered against the plaintiff. The investigation revealed that a criminal conspiracy was hatched by the plaintiff in connivance with some Government servants to illegally and illicitly fell trees standing on Government land under the garb of felling orders obtained for felling of trees from private forest. A demarcation was conducted and during demarcation it was found that in addition to the 169 trees which were marked for felling in the private land, the plaintiff had felled 97 trees from Government land. According to the defendants only 1556 scants of timber were taken into possession.

On the pleadings of the parties, the learned Single Judge framed a large number of issued. However, as far as the present appeal is concerned only following two questions are involved:

> 1.Whether the plaintiff is entitled to damages of Rs.10 lakhs on account of malicious prosecution?
> 2.Whether the plaintiff has proved that 2510 scants of timber were actually seized by the police and only 1556 were auctioned and as such the plaintiff is entitled to recover the value of the balance 954 scants?

To appreciate the claim of the plaintiff in respect of his claim of damages for malicious prosecution at the outset we may point out that a claim for malicious prosecution envisages an unsuccessful criminal prosecution of the plaintiff without reasonable or probable

cause. The acquittal of an accused in every case will not lead to the inference that he has been prosecuted without reasonable or probable cause. There is the social obligation of the State to bring criminals to justice. Every prosecution, even though bona fide, does not end in conviction. An accused may be acquitted for various reasons. Mere acquittal of the accused does not mean that the accused was being prosecuted maliciously. However, where a plaintiff who has been acquitted in a criminal case can prove and show that the entire police machinery was set in motion for extraneous reasons and he was maliciously prosecuted then such person is entitled to compensation.

The Privy Council in **Mohamed Amin vs. Jogendra Kumar Bannerjee and others, AIR(34) 1947 Privy Council 108,** had laid down the basic ingredients which the plaintiff must prove to succeed in a case of malicious prosecution. These ingredients are:

(a) He was prosecuted by the defendant;

(b) The prosecution terminated in favour of the plaintiff;

(c) The prosecution was instituted against him without any reasonable or probable cause;

(d) Prosecution was instituted with malicious intention;

(e) He suffered damages to his reputation, person or property.

In the present case, a perusal of the plaint shows that there are no proper pleadings in this regard. In para 12 of the plaint only general allegations have been made that the plaintiff has been put to unnecessary harassment and inconvenience. It is also alleged that his prosecution was based on no evidence and that the prosecution was totally groundless and based on extraneous considerations. The

allegations made in the plaint do not make out any case for malicious prosecution. There is no allegation in the plaint that the prosecution was instituted against the plaintiff without any reasonable or probable cause; there is no allegation that the prosecution was instituted with malicious intention.

Sh.G.D.Verma, learned senior counsel for the plaintiff submits that this Court while considering the pleadings should take a liberal attitude and the substance of the pleadings should be considered. He has relied upon **Ram Sarup Gupta)dead) by L.Rs vs. Bishun Narain Inter College and others, AIR 1987 SC 1242 & Virendra Kashinath Ravat and another vs. Vinayak N. Joshi and others, AIR 1999 SC 162.**

In our opinion this contention is without any force. The authorities cited have no relevance to the present case. In a suit for damages on account of malicious prosecution the plaintiff must plead and prove all the relevant ingredients. Even if we accept the argument of Sh.G.D.Verma that the pleadings be construed liberally, there can be no manner of doubt that the plaintiff must prove all the essential ingredients if he wants to succeed in a suit for damages on account of malicious prosecution. In the present case the plaintiff appeared in the witness box as PW-7. He has not uttered a word that the prosecution was malicious. The relevant portion of his statement reads as follows:

> "……..Enforcement people came and made a case against me. The case was tried in the Court of Sessions Judge and I was convicted. I

> thereafter filed an appeal. In appeal I was acquitted. The timber taken into possession by the Forest Guard was auctioned. I was not informed about the auction."

It is thus obvious that all that the plaintiff has stated is that he was convicted by the trial Court and acquitted in appeal. He also stated that the timber in the possession of the Forest Guard was auctioned. There is not a whisper that his prosecution was groundless or that it was without any reasonable or probable cause. The plaintiff in his statement does not make a murmur that the prosecution was instituted with malicious intention or that he has suffered any loss of reputation or damages to his person or property.

Confronted with this situation Sh.G.D.Verma, learned senior counsel has mainly relied upon the judgment delivered by this Court in Criminal Appeal No.2 of 1990 decided on 25.11.1993 whereby the plaintiff has been acquitted. We have gone through the judgment in detail. No doubt, the learned Judge had acquitted the accused. However, the reasons for acquittal are that the prosecution failed to prove that the second demarcation had been properly done. The learned Judge also came to the conclusion on the basis of certain documents exhibited in the criminal case that previously the Enforcement Department had found that no case was made out against the plaintiff and had in fact sent communications to the Divisional Forest Officer, District Shimla to release the timber. The degree of proof required in a criminal case is of a very high order. The case against an accused must be proved beyond reasonable

doubt. The learned Single Judge came to the conclusion that the learned trial Court had not taken various factors into consideration and had therefore acquitted the accused. But acquittal by the appellate Court by itself does not mean that the prosecution itself was instituted without any reasonable or probable cause. The judgment rendered by the learned Single Judge is only a piece of evidence. It is not conclusive proof of the facts stated in the judgment.

Section 41 of the Indian Evidence Act deals with judgments delivered by the Courts exercising probate, matrimonial, admiralty or insolvency jurisdiction. These judgments are conclusive proof of the declaration made in the judgment. The Courts, while exercising probate, matrimonial, admiralty or insolvency jurisdiction virtually pass judgments in rem. Section 41 does not apply to judgments delivered by the criminal courts.

Sections 42 & 43 of the Evidence Act which are relevant for our purpose read as follows:

> **"42.Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41.-** Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.
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> **43.Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant.-** Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

Under Section 42 a judgment, order or decree is relevant only in relation to matters of public nature. As far as Section 43 is concerned all other judgments are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of the Evidence Act. It is, therefore, evident that the judgment of the criminal court is not conclusive of the facts stated therein. At best it is relevant piece of evidence. Therefore, what has stated in the judgment cannot be accepted to be proved in the civil case. The plaintiff did not make any effort to prove the documents which supported him and which are referred to in the judgment of the criminal case. Without having proved those documents the same cannot be read in evidence in the present case.

In fact if we read the judgments, both of the trial Court as well as this Court in the criminal case, the conviction by the trial Court itself shows that there was some case against the plaintiff. The judgment of acquittal in a criminal case is not admissible for the purpose of proving malice and want of reasonable or probable cause which the plaintiff must establish by leading appropriate evidence in the Civil Court.

Therefore, we are of the considered opinion that the plaintiff has failed to prove that the prosecution was without any reasonable or probable cause. He has also miserably failed to prove that it was instituted with malicious intention; lastly the plaintiff has failed to prove that he suffered damages to his reputation, person or property by the said prosecution. Therefore, the plaintiff is not entitled to any damages on this count.

The next question which arises is as to when the timber was seized and the number of scants of timber taken into possession. The plaintiff has placed reliance on the launching list of timber Ext.PW-4/A allegedly prepared on 5th May, 1982. This report has been proved by PW-4 Sh.Nathu Ram who at the relevant time was Block Officer. According to him the plaintiff had taken permission for felling of trees and thereafter launching list was prepared by Sh.Ram Dass which was verified by him. He also signed the same. According to him the list was also signed by Rikhi Ram and as per the list 2510 scants of timber had been stacked at Khagna Pul. In cross examination this witness has admitted that he was an accused along with the plaintiff in the criminal case. He further states that he has sent the copies of the launching list to the higher authorities including the DFO. He has denied the suggestion that only 1556 scants were taken into possession.

This launching list has seen the light of day only in the present suit. No reference is made to this launching list in the criminal proceedings. The plaintiff was aware that in the criminal proceedings the State had clearly stated that 1556 scants of timber had been seized. He contested the criminal proceedings for almost a decade. He did not raise any protest that the number of scants mentioned in the seizure memo filed in the criminal case was incorrect. No reference was made to this launching list. It is also surprising that the launching list in original has been filed and proved in this Court. If such a launching list had been prepared it would have been the original launching list which would have been sent to the higher

officials. In case the original launching list had been sent to the higher officials the same could not have come out of the possession of the plaintiff. Assuming for the sake of arguments that the original launching list was retained by the plaintiff, PW-4 has stated that a copy of the same was sent to the higher authorities, the plaintiff led no evidence whatsoever to prove this fact. Other than the bald assertion of PW-4 who was a co-accused along with the plaintiff, there is not an iota of evidence to show that the copy of the launching list Ext.PW-4/A was ever sent to any higher authority. It is apparent that this list is a false and fabricated document prepared by the plaintiff in connivance with his other co-accused after the decision of the criminal case.

Assuming for the sake of argument that this launching list depicted the correct situation with regard to the timber stacked at Khagna Pul as on 5.5.1982 then also there is nothing on record to show that this timber was kept under proper supervision till it was seized by the Enforcement Department. Ext. DW-1/A which has been proved by the defendants itself shows that 1556 scants were taken over by the Enforcement Department on 23.10.1982. The plaintiff has led no evidence to show that between 5.5.1982 and 23.10.1982 the stacked timber was properly guarded and no part of the timber was exported.

The plaintiff has examined one Sh.Dole Ram to prove the fact that 2500 scants were carried by this witness from the forest to Khagna Pul. This witness is patently a false witness. Though he remembers the number of scants he carried he could not mention the

names of any labour which he had employed to carry the timber. Surprisingly, he states that he carried this timber in the months of July and August, 1983. This goes against the version of the plaintiff that the timber had been stacked in May, 1982 itself.

DW-1 Sh.S.D.Sharma who was the Launching Officer has spelt out the procedure for launching and export of timber. According to him, after the preparation of the launching list the contractor was required to apply to the DFO along with the list of converted timber, description of trees etc. The application was required to be sent to the Launching Officer who would sent it to the Deputy Ranger and the concerned Block In charge to see that the felling has been done in accordance with the felling permission and that the list is correct. Thereafter, the Block Officer is required to send the list to the Launching Officer who in turn would send the same to the Divisional Forest Officer. This witness states that though he was the Range Officer, this list was never sent to him. This witness has also proved the seizure memo Ext.DW-1/A dated 23rd October, 1982 showing that 1556 scants were seized by the Enforcement Department. This timber was seized in the presence of the witness. There is virtually no cross examination in so far as the number of scants is concerned.

Keeping in view the aforesaid evidence, it is apparent that the plaintiff has miserably failed to prove that 2510 scants were seized by the Enforcement Department. The plaintiff has been paid the value of 1555 scants of timber since one scant was kept as a sample in the criminal case. The deduction has been made on account of the

administrative charges incurred by the Forest Corporation for the sale of the timber. These charges could legitimately be deducted by the Forest Corporation.

In view of the above discussion, we are of the considered opinion that the learned Single Judge rightly decided the case against the plaintiff. Consequently, we dismiss the appeal with costs assessed at Rs.10,000/-.

(Deepak Gupta),
Judge

August 27, 2008.
PV

(V.K. Ahuja),
Judge